IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9238 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHD.HANIF KALANDARKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE AGP for Respondent No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2000

ORAL JUDGEMENT

#. District Magistrate, Banaskantha at Palanpur passed an order on November 4, 1999, in exercise of powers under Section 3 (2) of Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), detaining the petitioner

under the PBM Act.

#. The grounds of detention indicate that the petitioner was found to have been indulging in to activities detrimental to the smooth supply of essential commodities. It was found that the petitioner used to procure stock of illicit solvent on bills of free sale kerosene. The detaining authority was satisfied that the petitioner was used to sell this solvent to vehicle users, and has thereby engaged himself to profiteering and blackmarketing. The order of detention was, therefore, passed.

#. The petitioner challenges the order of detention in this petition under Article 226 of the Constitution of India on various grounds. However, Mr. Prajapati has relied on and restricted his arguments only to the fact that the detaining authority has exceeded its powers by considering and rejecting the representation made on behalf of the detenue. To substantiate his arguments, he submitted that a representation was made to the detaining authority on November 18, 1999, which was received by the detaining authority on November 20, 1999. The detaining authority got parawise remarks prepared through District Supply Officer and decided the representation on November 24, 1999 and rejected the same. The State Government was informed about it on November 25, 1999. Mr. Prajapati submitted that the detention was approved by the State Government on November 12, 1999. The detaining authority had, therefore, become functus officio and could not have decided the representation. The authority was bound to forward the representation immediately to the State Government, which it has failed to do and the continued detention of the detenue is, therefore, rendered illegal. The petition may therefore, be allowed.

#. The petition is opposed to by the learned AGP Mr. K.T.Dave appearing on behalf of the State of Gujarat and Ms. Davawala, representing the Central Government.

#. There is no dispute about the factual aspect that the representation dated November 18, 1999 was received by the detaining authority on 20th November, 1999. The representation was rejected on 24th November, 1999 by detaining authority. The detention was approved on 12th November, 1999. As such, after the representation is approved by the State Government, the detaining authority becomes functus officio and is required to forward the representation to the State Government for consideration. Here, the detaining authority has considered the representation and has rejected the same and thereafter

sent it to the State Government on 25th November, 1999. Thus, this action on the part of the detaining authority vitiates the detention on two grounds, first being that the representation could not have been considered by the detaining authority, which has been done and second being delay of about 7 days in forwarding the representation. In this regard, the decision of the Apex Court in the case of Navalshanker Dave vs. State of Gujarat, AIR 1994 SC 1496, can be profitably be employed in service. For the above-stated reasons, the petition deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated November 4, 1999 passed by the District Magistrate, Banaskantha at Palanpur is hereby quashed and set aside. The detenue- Mohd. Hanif Kalandarkhan Pathan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L.DAVE, J.]

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